

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 24, 2007

STATE OF TENNESSEE v. PAMELA SUE GOETZ

Direct Appeal from the Circuit Court for Bedford County
No. 16111 Lee Russell, Judge

No. M2007-00491-CCA-R3-CD - Filed November 15, 2007

The defendant, Pamela Sue Goetz, was indicted by a Bedford County Grand Jury for thirty counts of forgery under alternative theories of executing and passing fifteen forged checks. She pled guilty to all forgery counts and, as a result, received a total effective sentence of four years and six months to be served in confinement. On appeal, the defendant argues that the trial court erred by denying her alternative sentencing. Following our review of the parties' briefs, the record, and applicable law, we hold that the trial court did not err and affirm that court's judgments.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J., joined.

Andrew Jackson Dearing, III, Shelbyville, Tennessee, for the appellant, Pamela Sue Goetz.

Robert E. Cooper, Jr., Attorney General and Reporter; Rachel E. Willis, Assistant Attorney General; Charles Crawford, District Attorney General; and Michael D. Randles, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

Pursuant to a plea agreement, the defendant pled guilty to thirty counts of forgery under alternative theories of executing and passing fifteen forged checks and received an effective sentence of four years and six months with the manner of service to be determined by the court.¹ According

¹ To arrive at the effective sentence, the trial court first merged each even-numbered count with its odd-numbered counterpart, i.e. Count 2 merged with Count 1; Count 4 merged with Count 5, etc. The trial court then imposed a sentence of one year and six months for Counts 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, and 29. Counts
(continued...)

to the facts presented at the plea acceptance hearing, the defendant, along with other co-defendants, signed and passed checks on the account of the victim, Linda Cahill, at various businesses in Shelbyville. The defendant described her involvement in the crimes as not signing the checks but just passing them.

At the sentencing hearing, the state prosecutor submitted the presentence investigation report and noted that the defendant had incurred new charges of DUI, a violation of the implied consent law, and driving on a revoked license. The state prosecutor submitted into evidence the arrest warrants reflecting these charges. The defendant testified that she was thirty-two years old and lived with her husband, Billy Goetz, her friend and co-defendant, Fredia Johnson, and her brother-in-law. She admitted that she passed forged checks but, she submitted that she did so unknowingly. She stated that she had been working as a confidential informant for a drug task force for approximately a year and a half. At the behest of the drug task force, she would buy crack cocaine from drug dealers. However, the defendant admitted that she began working for the drug task force after she was caught selling crack cocaine. She also admitted that she continued to use crack cocaine while assisting the drug task force but with less frequency. The defendant further admitted that she did not have formal employment and had not worked in “probably five or six years.” The defendant asked the court for leniency because she did a lot for the community, continued to work for the drug task force, went to church, and was doing the best she could do. She stated that she was aware of the rules and regulations for probation and community corrections and felt that she could comply with them.

At the conclusion of the sentencing hearing, the trial court calculated the defendant’s sentence and found the following:

[T]he question is whether she’s entitled to alternative sentencing. It’s been suggested that she get community corrections. Frankly, I do not find her to [be] a good bet, based upon . . . the testimony at the trial the other day that she’s continuing to use crack cocaine. And then today she tried to leave the impression that she is not. And it turns out, when reminded, that she recalls telling the jury the other day that she used crack in the last 90 days. And she has an extensive record, tends to repeat the same things, the same offenses over and again. I don’t think she’s a good candidate for alternative sentencing. So I’m going to deny alternative sentencing.

ANALYSIS

The defendant’s sole issue on appeal is whether the trial court erred in denying alternative sentencing and imposing full confinement. When an accused challenges the length and manner of

¹(...continued)

1, 3, 5, 19, 21, and 29 (group 1) were ordered to run concurrently to each other, Counts 7, 9, 11, 13, 23, 27 (group 2) were imposed concurrently with each other, and Counts 15, 17, and 25 (group 3) were imposed concurrently with each other. These three groups were then ordered to run consecutively to each other to achieve the net sentence of four years and six months.

service of a sentence, this court conducts a de novo review of the record with a presumption that the trial court's determinations are correct. Tenn. Code Ann. § 40-35-401(d). This presumption of correctness is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances. *State v. Pettus*, 986 S.W.2d 540, 543-44 (Tenn. 1999). However, if the record shows that the trial court failed to consider the sentencing principles and all relevant facts and circumstances, then review of the challenged sentence is purely de novo without the presumption of correctness. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). On appeal, the party challenging the sentence imposed by the trial court has the burden of establishing that the sentence is erroneous. Tenn. Code Ann. § 40-35-401, Sentencing Commission Comments.

A defendant is presumed to be a favorable candidate for alternative sentencing if the defendant is an especially mitigated or standard offender convicted of a Class C, D, or E felony and there exists no evidence to the contrary. Tenn. Code Ann. § 40-35-102(6). However, this presumption is unavailable to a defendant who commits the most severe offenses, has a criminal history showing clear disregard for the laws and morals of society, and has failed past efforts at rehabilitation. *Id.* § 40-35-102(5); *State v. Fields*, 40 S.W.3d 435, 440 (Tenn. 2001). Also, the presumption in favor of alternative sentencing may be rebutted by facts contained in the presentence report, evidence presented by the state, the testimony of the accused or a defense witness, or any other source, provided it is made a part of the record. *State v. Parker*, 932 S.W.2d 945, 958 (Tenn. Crim. App. 1996). Pursuant to Tennessee Code Annotated section 40-35-103, a trial court may determine whether incarceration rather than alternative sentencing is appropriate if the evidence shows that:

- (A) Confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct;
- (B) Confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses; or
- (C) Measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant[.]

Tenn. Code Ann. § 40-35-103(1)(A)-(C). As part of its determination, the trial court may also consider the defendant's potential or lack of potential for rehabilitation. *Id.* § 40-35-103(5). Additionally, the defendant's lack of truthfulness or candor is an appropriate consideration as it relates to the defendant's potential for rehabilitation. *State v. Nunley*, 22 S.W.3d 282, 289 (Tenn. Crim. App. 1999).

In the instant case, the trial court denied alternative sentencing because of the defendant's lack of candor regarding her drug addiction and the "multitude of [her] past convictions." Upon review, the record reflects that the defendant had a number of past misdemeanor convictions

including five convictions for driving on a revoked license, three convictions for failure to appear, two convictions for passing worthless checks, one conviction for simple possession of marijuana, one conviction for driving under the influence (DUI), and one conviction for driving with a suspended license. The record also indicates that probation violation warrants were pending against the defendant in Bedford and Marshall counties. It also appears from the record that measures less restrictive than confinement had been applied unsuccessfully to the defendant. In sum, the record supports the trial court's denial of alternative sentencing. The defendant has not met her burden in showing that her sentence of confinement was improper. Therefore, the defendant is not entitled to relief on this issue.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

J.C. McLIN, JUDGE